

1 **Genet McCann**  
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6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF MONTANA**  
9 **HELENA DIVISION**

10  
11 **GENET MCCANN**  
12 **Plaintiff,**

13 **v.**

14 **The COMMISSION ON PRACTICE of**  
15 **the Supreme Court of the State of**  
16 **Montana;** Ward Taleff, in his official  
17 capacity as Chairman of the Commission On  
18 Practice; Tracy Axelberg, in his official  
19 capacity as Vice Chairman of the  
20 Commission On Practice;

21 **OFFICE OF THE STATE**  
22 **DISCIPLINARY COUNSEL,** Michael  
23 **Cotter** Chief Disciplinary Counsel, in his  
24 official capacity;

25 **Defendants/Respondents.**

26 **Case No. \_\_\_\_\_**

27 **VERIFIED COMPLAINT FOR**  
28 **DECLARATORY AND INJUNCTIVE**  
**RELIEF**

**Underlying ODC Case No. 15-078/PR 16-0635**

29  
30 **PRELIMINARY STATEMENT**

31 1. Defendants have been apprised on my intent to file for TRO and

32 Preliminary Injunction since, at least, January 5, 2018. On March 9, 2018,

1 Plaintiff filed in ODC 17-110, a Motion to Stay the March 23rd, 2018  
2 Proceedings therein. The motion was summarily denied.  
3

### 4 5 **STATEMENT OF FACTS**

6 1. I, Plaintiff Genet McCann, daughter of Anne Marie McCann, challenged,  
7 on appeal, the guardianship orders that deprived my mother, Anne Marie McCann  
8 of her federal constitutional rights, to the private attorney she retained, among  
9 other constitutional violations.  
10

11 2. Anne Marie appeared through her retain private counsel. Because one of  
12 the petitioners adverse to Anne Marie's interests alleged undue influence, the  
13 Court ordered the attorney off of the case without notice or hearing, and, pursuant  
14 to §72-5-315(2) appointed the State Public Defenders Officer to assign an attorney  
15 to represent her.  
16  
17

18 3. Because Anne Marie is a multi-millionaire several times over, she does  
19 not qualify for public defender, and a public defender was never assigned to  
20 represent her. Anne Marie was unrepresented throughout the guardianship and  
21 conservatorship proceedings. The State Office of Public Defenders substituted his  
22 judgment to nominate his choices that aligned with Anne Marie's adversaries..  
23  
24

25 4. After I exposed the fraudulent take over that Doug Wold and the defense  
26 attorney, Mark Parker, among others, embarked upon, they filed an informal  
27 complaint against me with the Office of Disciplinary Counsel which became the 7  
28

1 charges addressed in this complaint.

2 5. Anne Marie McCann has denied any possibility in having an attorney.  
3  
4 The district court outright denied her the private attorney she retained at the onset  
5 of the proceedings, simply because those who did not want her to have  
6 representation alleged that she was being *unduly influenced*. (**Exhibit:** Tr.  
7 1.24.2017, pp.)  
8

9 6. The district court appointed the State Office of Public Defender (OPD),  
10 pursuant to §72-5-315, MCA, to assign her a public defender. (**Exhibit:** Opening  
11 Br., In re A.M.M., I) However, the managing attorney for OPD, Steve  
12 Eschenbacher never appointed her a public defender. Anne Marie McCann did not  
13 qualify for public defender's service since qualify since her estate in approximately  
14 \$49 million dollars. (**Exhibit:** Wold's email/letter) The district court knew this as  
15 he made a comment to this extent.  
16  
17  
18

19 7. Steve Eschenbacher never represented Anne Marie. (**Exhibit:** Email  
20 string with Nick A.) Mr. Eschenbacher stated on the record he would only act if  
21 there is an emergency. (**Exhibit:** Opening Br., In re A.M.M., I)  
22

23 8. Casey Emerson, who was court-appointed visitor/investigator did not  
24 speak with Mr. Eschenbacher. (**Exhibit:** Opening Br., In re A.M.M., I)  
25

26 9. Timothy McCann, who was de facto guardian and lived with my mother  
27 at the time, stated that Mr. Eschenbacher never spoke with Anne Marie or himself.  
28

10. Mr. Eschenbacher substituted judgment over my mother's interests.



1 11. At the close of evidence, he nominates Mr. Eschenbacher nominates  
2 Casey Emerson, Paul, Jr.'s attorney. (**Exhibit:** Opening Br., In re A.M.M., I)

3  
4 12. Mr. Eschenbacher stated to me that the client records of Anne Marie are  
5 at the Office of Public Defenders, but the Office of Public Defenders state that they  
6 have no records of Anne Marie McCann as a client. (**Exhibit:** Emails  
7 Echenbacher and Nick A.)  
8

9 13. At this point, I have every reason to believe that Mr. Eschenbacher will  
10 not appear at the hearing as my witness, because he does not want the truth that he  
11 never represented my mother to be exposed.  
12

13 14. I have made it ultra-convenient for Mr. Eschenbacher to appear. He  
14 does not have to drive from Polson to Helena to appear. I made arrangements for  
15 him to appear via the state-wide Judicial VisionNet Network. (**Exhibit:** Hearing  
16 Subpoena – Steve Eschenbacher) Yet, he refuses to appear and testify.  
17  
18

19 15. Pursuant to §26-1-602 (5), MCA, it is presumed that “[e]vidence  
20 willfully suppressed would be adverse if produce.”  
21

22 16. Even though Anne Marie is a multimillionaire and certainly can afford  
23 to retain private counsel, the co-conservators who have been granted by court  
24 order, the authority to make the determination to retain an attorney for her, Doug  
25 Wold and the other co-conservator have refused. Doug Wold claims that he is  
26 sufficient to represent her interests.  
27  
28

17. I was initially charged with six alleged violations in ODC 15-078. It has

1 mushroomed into seven additional charges under ODC 17-110, plus a contempt  
2 proceeding, and an additional informal charge by the Vice Chair of the  
3 Commission in this proceeding for impugning his integrity.  
4

5 18. Plaintiff Genet McCann has suffered threatened personal injury of  
6 punishment, that includes possible immediate and irreparable harm to her good  
7 standing and reputation, including sanctions, suspension or disbarment, for  
8 engaging in the representation of her mother.  
9

10 19. In the American Jurisprudence, an attorney should not have to suffer the  
11 threat of disbarment for representing her client--who has long-suffered the  
12 deprivation of her fundamental right to personal autonomy and privacy in her  
13 family life, without the aid of counsel, without the opportunity to be heard. It is a  
14 gross miscarriage of justice.  
15  
16

17 Therefore, Plaintiff McCann is entitled to immediate declaratory and  
18 injunctive relief from this Court.  
19

## 20 **JURISDICTION AND VENUE**

21

22 20. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question);  
23 28 U.S.C. § 1343 (civil rights), 42 U.S.C. § 1983 (civil rights), and the First and  
24 Fourteenth Amendments to the United States Constitution.  
25

26 21. The Court has authority to grant the requested relief pursuant to 28  
27 U.S.C. §§ 2201, 2202, et seq. (declaratory and injunctive relief); 28 U.S.C. §1346;  
28

22. Venue for this action properly lies in the Helena Division of the District

1 of Montana because Defendant Michael W. Cotter, in his official capacity, works  
2 in Helena, and is believed to reside within Helena Division.

3  
4 **PARTIES**

5 23. Plaintiff Genet McCann resides in Gallatin County in the State of  
6 Montana.

7  
8 24. Defendant Commission On Practice is located in Lewis & Clark County  
9 in the State of Montana.

10  
11 25. Defendant Chairman Taleff, in his official capacity is located in Lew &  
12 Clark County, in the State of Montana.

13  
14 26. Defendant Vice Chairman Tracy Axelberg, in his official capacity is  
15 located in Lew & Clark County, in the State of Montana.

16  
17 27. Defendant Michael W. Cotter is Chief Disciplinary Counsel for  
18 Montana's Office of Disciplinary Counsel. Plaintiff McCann is informed, believes,  
19 and therefore alleges that Defendant Michael W. Cotter resides in Lewis & Clark  
20 County in the State of Montana. Plaintiff is suing Defendant Michael W. Cotter in  
21 his official capacity only.

22  
23 **Facts in Support of Third Party Standing**

24  
25 28. I, the plaintiff am injured by the denial of my mother's right to counsel,  
26 right to private counsel of her choice, and the right to a meaningful opportunity to  
27 be heard. The denial resulted in a guardianship and conservatorship that has  
28 interfered with my 14<sup>th</sup> Amendment fundamental right to privacy in my familial



1 relationship with her mother.

2 29. The Guardian who has custody of my mother relocated my mother to  
3 California against her will.  
4

5 30. The Guardian also imposed an unlawful injunction against me that  
6 makes it impossible for me to have a relationship with my mother.  
7

8 31. The appointed co-Conservator, Doug Wold, deprived me of my  
9 beneficial interest in my mother's estate. Within the first six and half months of  
10 Doug Wold's appointment he depleted my mother's estate by, \$166, 338.55 in  
11 fees. (**Exhibit:** Wold's fees)  
12

13 32. Doug Wold charged my mother for the unlawful personal use of her  
14 money to launch the felonious take-over of 15-20 corporations that I have  
15 ownership interests in, to hire himself as attorney for these 15-20 corporations, in  
16 conflict with his duties to my mother, who I possess testamentary interest to her  
17 last will and testament, that Doug Wold refused to acknowledge. (**Exhibit:**  
18 Opening Br., In re A.M.M., II)  
19  
20  
21

22 33. Doug Wold used my mother's majority voting power to vote her and  
23 her chosen directors out of all positions in the corporations and replace them all  
24 with the other co-conservator, who hired Doug Wold, as counsel for the 15-20  
25 Corporations.  
26

27 34. Because I have petition as party-litigant for justice and relief for these  
28 immoral, illegal and fraudulent acts against my mother and myself, that is tainted

1 fruit of my mother's constitutionally infirmed guardianship/conservatorship  
2 proceedings, ODC is prosecuting me for allegedly filing frivolous motions and  
3 making false statements that are prejudicial to the administration of justice, instead  
4 of prosecuting criminal conduct. (**Exhibit:** ODC's formal Complaint)

5  
6 35. Because I am facing sanctions, including public censure, suspension,  
7 fees and costs and possible disbarment as a at the March 23<sup>rd</sup>, 2018 hearing, for  
8 exercising my First Amendment right to litigation speech as a party litigant in my  
9 mother's case, I am injured by the federal constitutional violations to my mother.  
10  
11

#### 12 **Facts in Support of Prudential Rules**

13 36. Anne Marie McCann has been denied any possibility in having an  
14 attorney. Even though she is a multimillionaire and certainly can afford to have  
15 one, even though a court has never determined that she is legally incompetent --per  
16 72-5-306, MCA, incapacity is not a determination of legal incompetency-- the co-  
17 Conservators refuse to retain an attorney for her. (**Exhibit:** Wold's email) Doug  
18 Wold claims that he is sufficient. (Id.) The Order appointing the co-Conservators  
19 forfeited Anne Marie's civil right to retain counsel to the discretion of the co-  
20 Conservators. (**Exhibit** 3.14.2014 Order)  
21  
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## CAUSE OF ACTION

**COUNT I: Guardianship procedure statute 72-5-315(2) is unconstitutional on its face and as applied in violation of an individual's 1<sup>st</sup> and 14<sup>th</sup> Amendment fundamental right to retain private counsel and be heard through counsel.**

37. All previous paragraphs are incorporated by this reference.

38. The First and Fourteenth Amendment guarantees that an individual has a fundamental constitutional right to retain private counsel and to be heard through counsel. The right to a hearing always included the right to the aid of counsel when desired and provided by the party asserting the right. *Powell v. State of Alabama*, 287 U.S. 45, 68-69, 53 S.Ct. 55, 64, 77 L.Ed. 158; Chandler v. Fretag, 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed. 4 (1954) (Regardless of whether petitioner would have been entitled to the appointment of counsel, his constitutional right to be heard through his own counsel was *unqualified*.).

39. In pertinent part, Montana Code Anno. §72-5-315(2), states: "Upon filing of a petition [by anyone interested in welfare of the allegedly incapacitated person, ... [t]he allegedly incapacitated person may have counsel of the person's own choice *or the court may, in the interest of justice, appoint an appropriate official ... to represent the person in the proceeding.*" §72-5-315(2), MCA (Emphasis added).

40. Section 72-5-315(2), is unconstitutionally overbroad, on its face and as

1 applied, since it grants the district Court unbridled discretion to arbitrarily  
2 presume legal incompetency, based upon mere allegations, and deprive an  
3 individual, of their fundamental constitutional right, under the First and  
4 Fourteenth Amendments, to be heard through counsel and counsel of their own  
5 choice, without a showing of a compelling state interest that is narrowly tailored.  
6

7  
8 41. "Individual autonomy" regarding personal choice in marriage, family,  
9 family living arrangements, and other related choices, has been plainly declared a  
10 fundamental right under the substantive component to due process clause of the  
11 Fourteenth Amendment. Obergefell v. Hodges, 135 S.Ct. 2584, 2598 (2015)( "A  
12 first premise of the Court's relevant precedents is that the right to personal choice  
13 regarding marriage is inherent in the concept of individual autonomy.  
14  
15

16 42. When a fundamental constitutional right is at stake, "the statute must be  
17 narrowly and precisely drawn to further a 'compelling state interest' must be  
18 shown in support of the limitation." Doe v. Bolton 8212 40, 410 U.S. 179, 211-  
19 213.  
20

21  
22 43. Section §72-5-315(2) is particularly invidious as applied here, since it  
23 granted the power of substituted judgment.  
24

25 44. As a result, A.M.M. was denied her opportunity to be heard through  
26 counsel and of her own choice, without notice, before a guardianship and  
27 conservatorship proceedings that deprived her of fundamental personal liberties  
28 and privacy in her family.



1 45. Section 72-5-315(2) overbroad grant of discretion, to the court, to  
2 appoint an official in lieu of legal representation, that has the power to substitute  
3 their officiated judgment, over the voice of the individual, is unconstitutional  
4 deprivation of the opportunity to be heard with the aid of counsel and the aid of  
5 counsel of one's own choice, in violation of the Fourteenth Amendment to the  
6 United States Constitution.  
7  
8

9 46. Because §72-5-315(2) impermissibly denied A.M.M. the opportunity to  
10 be heard through the aid of counsel and through the aid of counsel of her own  
11 choice, the statute should be struck down as unconstitutional.  
12

13 47. As a result, Anne Marie was denied the opportunity to be heard through  
14 the aid of one's own counsel, and denied First Amendment right to seek the  
15 redress of the gross miscarriage of justice—exiled to California and estranged and  
16 enjoined from her choice in family relationships.  
17  
18

19 48. §72-5-315(2), MCA, on its face and as applied, is void for vagueness,  
20 since it permitted the Court to arbitrarily violate an individual's right to aid of  
21 counsel guaranteed under the Fourteenth Amendment to the U.S. Constitution  
22 before fundamental constitutional rights to individual autonomy and privacy in  
23 family and marital file were taken. Powell v. State of Alabama, 287 U.S. 45, 69,  
24 53 S.Ct. 55, 77 L.Ed. 158 (1932) ("The right to be heard would be, in many cases,  
25 of little avail if it did not comprehend the right to be heard by counsel.")  
26  
27  
28



1 49. If the government “presumes facts” against a person, so that she is not  
2 qualified for some important benefit or right, the irrebuttable presumption may be  
3 unconstitutional. The Court is creating an arbitrary classification. *See Cleveland*  
4 *Board of Education v. LaFleur*, 414 U.S. 632 (1974) If the presumption affects a  
5 fundamental right or a suspect or quasi-suspect classification, it will likely be  
6 invalid under strict scrutiny or intermediate scrutiny analysis.  
7  
8

9 50. Here, the guardianship statute creates an arbitrary classification in  
10 violation of the First and Fourteenth Amendments to the U.S. Constitution since it  
11 permits the Court to presume, that an alleged incapacitated person is incompetent  
12 to retain counsel of their own choice, and, in its discretion, to appoint, a  
13 professional --to substitute their professional judgment in place of the individual's  
14 so that the individual is denied their First Amendment Right to a voice in a  
15 proceeding and their Fourteenth Amendment right to aid of counsel, without due  
16 process since these fundament rights are taken upon mere allegations and unstated  
17 presumptions, at the onset of a proceeding to permanently deprive the person their  
18 personal autonomy and right to their marital life.  
19  
20  
21  
22

23 51. As a result, Anne Marie McCann, the alleged incapacitated person, was  
24 permanently deprived of her fundamental federal constitutional right to personal  
25 autonomy and her fundamental right to her close family relationship with her adult  
26 children, especially her devoted son who she trusts, by a mere preponderance of  
27 the evidence in violation of the Fourteenth Amendment.  
28

**COUNT II: Disqualification for Cause statute 3-1-805 is unconstitutional on its face and as applied in violation of an individual's 1<sup>st</sup> and 14<sup>th</sup> Amendment fundamental right to Petition for the Removal of Judge that is not neutral and fundamentally fair in the due process of the law.**

52. All previous paragraphs are incorporated by this reference.

53. The procedure refers the affidavit to disqualify to the Montana Supreme Court.

The Montana Supreme

54. The Montana Supreme Court does not have subject matter jurisdiction to consider the issue since it is NOT a court of original jurisdiction for criminal and civil matters and cases at law and in equity, only district courts have such subject-matter jurisdiction. (**Exhibit:** VII, §§2,4, MONT CONST.)

55. Since 3-1-805 (b), MCA, on its face, does not find an affidavit is made in good faith if it is *based soley on the ruling in the case*, it does not permit 14<sup>th</sup>

Amendment federal recusal based upon pervasive bias claim under *Likety v.*

*United States*, 510 U.S. 540, 555 (1994) (bias and prejudice may be established by the rulings that occur in the course of the proceeding if the Court's actions display a deep-seated favoritism or unequivocal antagonism that would render fair judgment impossible.)

56. Section 3-1-805, MCA is unconstitutional as applied since the commissioned 11- year study of the affidavits to disqualify under §3-1-805 demonstrate 100%

denial rate for disqualification under its procedure. (**Exhibit:** 11-year Survey of §3-1-805.)

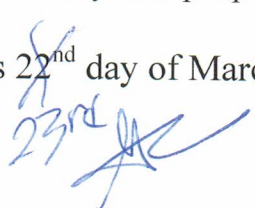
57. Therefore, §3-1-805, MCA is not a procedure that ensures First Amendment Right for the redress of grievances associated with 14<sup>th</sup> Amendment's fundamental right to a neutral magistrate. Rather, it has served to patently block First and Fourteenth Amendment rights.

### PRAYER OF RELIEF

WHEREFORE, Plaintiff Genet McCann requests the following relief from this Court:

- a) Jury Trial for Preliminary Injunction Hearing;
- b) Or, in the alternative, a Three Judge Panel under 28 U.S.C. § 2284;
- c) Declare that Section 72-5-315, Mont. Code Anno. is unconstitutional;
- d) Declare the Guardianship Orders Void; and
- f) Grant such other relief to which Plaintiff McCann may be entitled, or as this Court deems necessary and proper.

DATED this 22<sup>nd</sup> day of March, 2018.

  
\_\_\_\_\_  
/s/ Genet McCann  
Genet McCann



**VERIFICATION BY GENET MCCANN**

I, Genet McCann, declare as follows:

1. I am the Plaintiff in the above-entitled matter.

2. I have drafted the attached Complaint and declare that the facts contained therein are true, except insofar as they are stated to be on information, and that, insofar as they are stated to be on information, I believe them to be true.

Executed on March 22, 2018.

  
  
\_\_\_\_\_  
Genet McCann, Declarant

### CERTIFICATE OF SERVICE

I hereby certify and affirm that on this Friday the 23rd day of March 2018, , I served a true and correct copy of my above-and-foregoing personal service and by electronic mail delivery, upon the following:

Ward "Mick" Taleff, Chairperson  
Commission on Practice of the Supreme Court of the State of Montana  
Ward@talefflaw.com; Karen@talefflaw.com

Tracy Axelberg, Vice Chairman  
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By: /S/ Genet McCann  
Genet McCann, Esq.